

invention. Moreover, the references fail to disclose or suggest the claimed invention even if it were obvious to combine same.

At the outset, Applicants note that the second reference that is cited by the Patent Office in support of the obviousness rejection is *Poppel*. *Poppel* is not prior art to the claimed invention. In this regard, the present patent application claims priority from provisional applications having filing dates of August 6, 1996 and January 24, 1997. The *Poppel* application has a publication date of January 30, 1997. Thus, it is not prior art to the above-identified patent application. Thus, for this reason alone, the rejection of Claims 1-10 is not proper. Moreover, Applicants respectfully submit that the rejection is not proper for the following reasons.

The present invention provides, in Claims 1-8, a canned pet food product. The canned pet food product as set forth in independent Claim 1 includes a base layer comprising solid food pieces in a gravy having a substantially conical recess formed into its upper surface. An upper layer is provided comprising a substantially solid foodstuff capable of supporting the base layer when the food product is inverted. The solid foodstuff fills the conical recess formed in the base layer. The solid foodstuff comprises about 20-80% by weight of the pet food product. Claim 9 provides a process for producing a pet food having a base layer and an upper layer and creating the conical recess portion. Claim 10 also comprises a process for producing a canned pet food including a base layer and an upper layer wherein the base layer includes a conical recess that is filled with the upper layer. The cited references, either alone or in combination, fail to disclose or suggest any of these claimed elements.

The claimed invention provides a product that avoids food fatigue. In this regard, it provides a varied product for the pet to eat. At the same time, the conical feature of the claimed invention assists in providing a stable structure for the food when it is removed from the can of pet food. When

the can is inverted, the upper surface will support the base structure when the contents are dumped into the feeding bowl. This claimed feature is neither disclosed nor suggested by the cited art.

The principal reference relied upon by the Office Action is *Ohba*. *Ohba* fails to disclose or suggest the ability of the upper layer, on inversion, to support the base layer. Nor does *Ohba* disclose or suggest that the base layer, before inversion, includes solid food pieces in gravy. *Ohba* only teaches that different food varieties having substantially the same structural characteristics should be included in the can. In this regard, *Ohba* is only concerned that the order in which the food is eaten by the pet is varied (see column 2, lines 16-22). If anything, *Ohba* teaches away from the claimed invention in that it is not desirable to have an upper and base layer as in the claimed invention as this reduces the capacity to vary the order of layers for the pets. *Ohba* does not disclose nor suggest the base layer and upper layer as specifically claimed in Claims 1-10.

Applicants note that the claimed invention is a product that maintains its structural integrity as well as separation of one product phase from another. This is achieved in part by the conical recess. The claimed invention allows the consumer to tip the can over allowing the product to maintain its structural integrity. For example, if the layers were reversed, in tipping out the contents by the consumer, the chunks and the gravy would emerge first. The solid layer would then follow and would thereby attempt to be perched on top of the loose chunks. This would provide an inherently unstable product with unpredictable results. Not only would the resultant product not be appealing as in the claimed invention, it is also easy to imagine that the solid layer would remain in the bottom of the can upon the can being inverted. Therefore, it may be necessary to dig out the product with a spoon, fork, or other implement.

The remaining references do not remedy the deficiencies of *Ohba* set forth above.

With respect to the *Quaker* reference, *Quaker* does not provide any layered structure at all. Although it teaches the manufacture of a two phase product, neither phase comprises individual solid chunks in a substantially flowable medium. Indeed, in *Quaker*, one of the phases is completely surrounded by the other phase. This is set forth as being an essential feature of *Quaker*. This, therefore would direct one skilled in the art away from the claimed invention and specifically the conical recess. Moreover, it is not seen where the suggestion is in the art to modify *Ohba* in view of *Quaker*.

The *McMahon* reference does not deal with pet foods. Although it contemplates meat-based products, it provides a product wherein each can provides several identical servings though they have a vertical separation of components. In contrast to the claimed invention, *McMahon* is not concerned with a single serving having a specifically desired structure. Instead, *McMahon* provides a two-phase food product wherein the phases are separated along a substantial axial interface in the can. Thus, *McMahon* is not concerned with issues that are created by a horizontally layered structure that is designed so that its contents are dispensed into a dish or other container. In contrast to the claimed invention, which is designed to be inverted into a dish and maintain it's attractive appearance, *McMahon* is satisfied with an attractive appearance only at the time the can is opened. See page 2, line 61 to page 3, line 5. Instead of inverting and dumping the can into a dish, in *McMahon* the concern is with spooning out the phases in a uniform manner. See page 2, lines 62-64. Thus, *McMahon* is not concerned with maintaining a vertically based configuration upon inverting the can.

Although *McMahon* may state that one phase can contain fruit chunks in a sauce, this does not address the issue of how to dispense the contents so the chunks lie on top of an underlying solid phase. Contrary to the Office Action's statement, *McMahon* does not evidence

that phases may vary as desired. In fact, *McMahon* discloses to one skilled in the art that careful consideration has to be given to the various parameters and properties of the phases to avoid undesirable consequences such as intermixing. Further, vertically oriented separated phases do not address or suggest the issues that apply to horizontal interfaces. In this regard, gravitational effects must be considered with respect to horizontal interfaces as opposed to the vertical interfaces of *McMahon*. *McMahon* does not even suggest how these issues should be dealt with.

*Hillebrand*, similar to *McMahon* is concerned with the appearance of the product in the container and not with the appearance of the contents when they are emptied from the container. *Hillebrand* is not concerned with a product that is dispensed as one complete meal. Therefore, *Hillebrand* is not concerned with the inversion of the can but, again similar to *McMahon*, provides a product that is designed to be scooped out of the container in appropriate portions. Hence, *Hillebrand* is not concerned with the structure of the present invention that allows a container to be inverted and dispensed into a dish maintaining its structural integrity.

When these references are combined with *Ohba*, one does not achieve the claimed invention. For example, all of the references fail to disclose or suggest the horizontally oriented claimed product. Nor do the references disclose the claimed conical recess.

Nor do the *QP Corp* references remedy the deficiencies set forth above. Each of these references is concerned with bread-spread compositions in a container. By definition the spreads would be removed in small, discrete quantities. Thus, the issues that are faced by the claimed invention in providing a complete meal that can be attractively dispensed in its entirety from a can are not a concern with these references. Neither of these references are concerned with how the product is dispensed from the container but, rather the concern is with putting them in an attractive position within the container.

With respect to *Errass*, this reference relates to a product, specifically a condiment, that is dispensed from a tube. Nothing is disclosed in *Errass* with respect to horizontal layering or the conical recess.

With respect to *Henkel*, this reference relates to a cosmetic, not a food. Applicants respectfully submit that this reference would not even be considered by one skilled in the art. Regardless, the reference does not disclose horizontally disposed layers. *Henkel* is no more relevant to a conical structure than it is to a simple layered structure. The claims of the present invention are not directed to a cylinder with an outer phase such as that in *Henkel*.

Therefore, *Henkel* does not remedy the deficiencies noted above.

*Mandanas* relates to the dispensing of viscous paste from containers such as squeezable tubes. *Mandanas* has nothing to do whatsoever with rigid cans. Nor does *Mandanas* have anything to do with foods, specifically pet foods. The structures of the components inside *Mandanas* are not horizontally layered, but instead there is core surrounded by another layer. The contents are not designed to be extruded all at once, much less as a complete meal. This reference appears to add nothing to the references set forth above.

*Routh* relates to the insertion of different filler materials into a body of ice cream. *Routh* does not relate to the forming of separate contiguous layers of different structures for dispensing in the desired order.

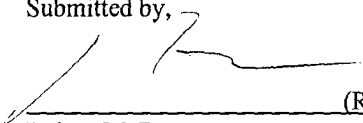
*De Pasquale* relates to the preparation of ice cream. Although a layered structure is mentioned, and the drawings illustrate a conical structure, the different layers are of the same material. In this regard, the different layers are ice cream differing only in color and flavor (column 1, lines 66-69). The ice cream, the material for the separate layers, is filled into the container in a partially congealed state (see column 1, line 69). The solid, frozen ice cream is

served by inverting the container into a serving dish. There is no suggestion that different textures and densities of materials can be combined in a single container. Thus, there is no disclosure that these materials can be combined without intermingling. Nor is there any suggestion how to deal with the filling, containment, and serving of a structured food product that combines a solid supporting layer with a partial liquid (gravy). Further, Applicants respectfully submit that one skilled in the art in pet food manufacture would not look to the ice cream industry for manufacturing cans of pet food.

Accordingly, Applicants respectfully submit that the cited art fails to disclose or suggest the claimed invention. For example, clearly the conical structure of the claimed invention, of each of Claims 1-10, is not suggested by the cited art. Nor is the supporting structure that is specifically claimed. Therefore, Applicants respectfully request that the rejections of Claims 1-10 under 35 U.S.C. § 103 be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of their patent application and earnestly solicit an early allowance of same.

Submitted by,

  
(Reg. No. 30,142)

Robert M. Barrett  
Bell, Boyd & Lloyd LLC  
P.O. Box 1135  
Chicago, IL 60690-1135  
Phone: (312) 807-4204  
Attorney for Applicant